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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

LISA GOMEZ,

Defendant and Appellant.

G050992

(Super. Ct. No. 13CF1551)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James Edward Rogan and Sheila F. Hanson, Judges. Affirmed as modified.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Kimberley A. Donohue, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant and appellant Lisa Gomez entered a Home Depot store where Robert Hernandez was working as a loss prevention officer. Hernandez saw defendant put a can of paint and some door knobs into her cart. She left the store without paying for the items. As defendant walked out the door, sensors sounded and she ran. Hernandez followed her, identifying himself as store security. The items fell out of defendant's purse.

When Hernandez attempted to handcuff defendant, she resisted. He was able to secure one handcuff but when he attempted to put on the second, defendant swung at him with the handcuff and hit him in the face. Defendant was later arrested.

A jury convicted defendant of the lesser included offense of theft, after finding her not guilty of attempted second degree robbery, and assault with a deadly weapon. She was sentenced to three years' probation on condition she serve 204 days in jail.

Probation condition No. 17 included the language that defendant not "associate with persons . . . *otherwise disapproved of by probation or mandatory supervision.*" (Italics added.) Defendant challenges this condition on various grounds, including that it is overbroad, and should be stricken. (*People v. O'Neil* (2008) 165 Cal.App.4th 1351, 1357 [probation condition that did not describe "class of persons with whom defendant [could] not associate" nor give guidelines to probation departments as to whom was included was improperly overbroad].) The People agree. Therefore, this condition must be stricken.

Prior to trial defendant served a subpoena duces tecum on Home Depot seeking personnel records of Hernandez and Thomas Hagman, a specialty assistant manager, customer complaints regarding use of excessive force by loss prevention officers, and the loss prevention officer training manuals. The court reviewed the documents in camera, found they were not relevant, and ordered them sealed.

Defendant contends we should independently review the documents and determine whether they were relevant to impeach Hernandez's credibility or are otherwise exculpatory. The People do not object to our review to determine whether the trial court abused its discretion in ordering the documents not be produced.

We have reviewed the documents and conclude they are not relevant to impeach Hernandez, or to otherwise exculpate defendant. The trial court did not abuse its discretion when it ordered the documents should not be produced to defendant.

DISPOSITION

The matter is remanded for the court to strike that portion of probation condition No. 17 as set out in this opinion. In all other respects the judgment is affirmed.

THOMPSON, J.

WE CONCUR:

FYBEL, ACTING P. J.

IKOLA, J.